

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

HERSCHELL ORR,)
)
)
Plaintiff,)
)
vs.)
) CASE NO. 3:20-cv-49
DOLGENCORP, LLC)
)
)
Defendant.)
)
)
)

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES AND CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Dolgencorp, LLC, by counsel, hereby files this Notice of Removal to remove the above-entitled civil action from the Circuit Court of Daviess, Indiana, to this Court based upon the following supporting grounds, appearing solely for the purpose of removal, and for no other purpose, and preserving all other defenses available to it, states as follows:

1. Copies of all process and pleadings filed and/or received by Defendant and the docket sheet for the Daviess County Circuit Court action, as of February 26, 2020, are attached hereto and incorporated herein as Exhibit 1.
2. Dolgencorp, LLC is a defendant in a Complaint filed in the Daviess County Circuit Court, entitled *Herschell Orr v. Dolgencorp, LLC*, under Case No. 14C01-2001-CT-000052, a copy of which is attached hereto as Exhibit 2.

3. Plaintiff, Herschell Orr (hereinafter “Plaintiff”), filed his Complaint on January 21, 2020. In his Complaint, Plaintiff alleges damages arising from an incident on August 25, 2019, in which he fell while inside a Dollar General store located in Washington, Daviess County, Indiana. Plaintiff alleges that he “tripped over a plastic soda bottle that was in the aisle of the store” and that Defendant was negligent in failing to use reasonable care in the inspection and maintenance of its premises.
4. A summons and copy of the Complaint were served on Defendant by certified mail on January 27, 2020. Thus, this notice of removal is being filed within thirty (30) days after Plaintiff’s service of the initial pleading in this matter on Defendant and is therefore timely under 28 U.S.C. §1446(b).
5. Plaintiff’s Complaint provides no information as to Plaintiff’s domicile. However, on February 26, 2020, Undersigned Counsel conferred with Counsel for Plaintiff, who confirmed that Plaintiff is a resident of Washington, Daviess County, Indiana. Therefore, Plaintiff is a citizen of Indiana.
6. Defendant Dolgencorp, LLC is a foreign limited liability company. The sole member of Dolgencorp, LLC is Dollar General Corporation. Dollar General Corporation is incorporated in Tennessee and has its principal place of business in Tennessee. Therefore, Dolgencorp, LLC is a citizen of Tennessee.
7. “A case falls within the federal district court’s ‘original’ diversity ‘jurisdiction’ only if diversity of citizenship among parties is complete, *i.e.*, only if there is no plaintiff and no defendant who are citizens of the same State.” *Wis. Dep’t of Corrections v. Schacht*, 524 U.S. 381, 388 (1998). Because Plaintiff and Defendant are citizens of different

states, there is complete diversity of citizenship between the parties in accordance with 28 U.S.C. § 1332(a).

8. Plaintiff's Complaint provides no information regarding the value of his claims. However, Plaintiff alleges that he sustained permanent injuries and "has incurred medical expenses and other special expenses, and will incur future medical expenses and other special expenses" as a result of his fall. On February 26, 2020, Counsel for Plaintiff provided additional information indicating that Plaintiff injured his knee as a result of the subject fall, which was initially treated conservatively but subsequently required surgery. Plaintiff's Counsel further advised that Plaintiff continues to treat for his injury, including twice-weekly physical therapy sessions. Plaintiff declined to stipulate that his damages do not exceed \$75,000. Therefore, based on the information available to Defendant, the alleged damages in this case exceed \$75,000.
9. "[T]he proponent of [federal] jurisdiction . . . has the burden of showing by a preponderance of the evidence facts that suggest the amount-in-controversy requirement is met. That is easier said than done when the plaintiff, the master of the complaint . . . provides little information about the value of her claims. In such a case, a good-faith estimate of the stakes is acceptable if it is plausible and supported by a preponderance of the evidence. Once the defendant in a removal case has established the requisite amount in controversy, the plaintiff can defeat [federal] jurisdiction only if 'it appears to a legal certainty that the claim is really for less than the jurisdictional amount.'" *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 511 (7th Cir. 2006) (internal citations omitted). Thus, based on the information available, the amount in controversy exceeds \$75,000, exclusive of interests and costs required under 28 U.S.C. § 1332(a).

10. Accordingly, the requirements for complete diversity and amount in controversy are satisfied, and this court has original jurisdiction pursuant to 28 U.S.C. § 1332(a). This case is subject to removal in accordance with the provisions of 28 U.S.C. § 1441(b) in that it is a civil action between citizens domiciled in different states and the preponderance of the evidence shows that the amount in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs.

11. Because the state court action was filed in Daviess County, Indiana, the District Court for the Southern District of Indiana, Evansville Division, is the proper venue. *See* 28 U.S.C. §§ 1441(a) and 94(b)(3).

12. On February 26, 2020, a Notice of Filing of this Notice of Removal will be filed with the Daviess County Circuit Court via that court's electronic filing system, and will be served upon all counsel in this action. A copy of that Notice is attached hereto as Exhibit 3.

WHEREFORE, the Defendant, Dolgencorp, LLC d/b/a Dollar General, by counsel, respectfully gives notice that this civil action is removed to this Court from the Daviess County Circuit Court.

Respectfully submitted,

/s/ Katherine M. Haire

Katherine M. Haire (31330-49)

REMINGER CO., LPA

College Park Plaza

8909 Purdue Road

Suite 200

Indianapolis, IN 46268

T: 317-352-5240

F: 317-228-0943

khaire@reminger.com

Attorney for Defendant DOLGENCORP, LLC

CERTIFICATE OF SERVICE

I certify that on this day, February 26, 2020, the foregoing document was filed electronically using the Court's CM/ECF system, which sends electronic notification to all *registered* parties. I further certify that on the same day of filing, a copy of the foregoing document was sent by first class U.S. mail, postage pre-paid, to:

Phillip Olsson
KEN NUNN LAW OFFICE
104 S. Franklin Road
Bloomington, IN 47404
philo@kennunn.com
Counsel for Plaintiff

/s/ *Katherine M. Haire*
Katherine M. Haire (#31330-49)
REMINGER CO., L.P.A.